

AMENDED IN SENATE MARCH 24, 2008

**SENATE BILL**

**No. 1259**

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**Introduced by Senator Margett**

February 15, 2008

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An act to amend Sections 237, 368, 1048, and 14213 of the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

SB 1259, as amended, Margett. Crimes against elders and dependent adults.

Existing law proscribes various crimes committed against an elder or dependent adult when the person has knowledge or reasonably should know that the victim is an elder or dependent adult. These crimes include willfully causing or permitting an elder or dependent adult to suffer or inflicting unjustifiable physical pain or mental suffering, or causing or permitting the person or health of the elder or dependent to be injured or placed in a situation in which his or her health is endangered. Existing law also establishes an additional penalty for a person who violates any provision of law proscribing theft, embezzlement, forgery, fraud, or identity theft, with respect to the person or property of an elder or dependent adult.

This bill would apply the above penalty to knowingly engaging in exploitation of or exerting criminal undue influence upon ~~a vulnerable~~ *an* elder or dependent adult in order to acquire possession or control of an interest in funds or property of the ~~vulnerable~~ elder or dependent adult. This bill would also establish a 2-year penalty enhancement for each prior conviction for any person who violates the above provisions governing abuse of an elder or dependent adult in addition to the sentences set forth in those provisions. The bill would revise and recast

the definitions of terms used in those provisions and make technical changes to related provisions.

By expanding the definitions of crimes, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 237 of the Penal Code is amended to  
2 read:

3 237. (a) False imprisonment is punishable by a fine not  
4 exceeding one thousand dollars (\$1,000), or by imprisonment in  
5 the county jail for not more than one year, or by both that fine and  
6 imprisonment. If the false imprisonment be effected by violence,  
7 menace, fraud, or deceit, it shall be punishable by imprisonment  
8 in the state prison.

9 (b) False imprisonment of an elder or dependent adult by use  
10 of violence, menace, fraud, or deceit shall be punishable as  
11 described in subdivision (g) of Section 368.

12 SEC. 2. Section 368 of the Penal Code is amended to read:

13 368. (a) The Legislature finds and declares that crimes against  
14 elders and dependent adults are deserving of special consideration  
15 and protection, not unlike the special protections provided for  
16 minor children, because elders and dependent adults may be  
17 confused, on various medications, mentally or physically impaired,  
18 or incompetent, and therefore less able to protect themselves, to  
19 resist financial exploitation or criminal undue influence, to  
20 understand or report criminal conduct, or to testify in court  
21 proceedings on their own behalf.

22 (b) (1) Any person who knows or reasonably should know that  
23 a person is an elder or dependent adult and who, under  
24 circumstances or conditions likely to produce great bodily harm  
25 or death, willfully causes or permits any elder or dependent adult  
26 to suffer, or inflicts thereon unjustifiable physical pain or mental

1 suffering, or having the care or custody of any elder or dependent  
2 adult, willfully causes or permits the person or health of the elder  
3 or dependent adult to be injured, or willfully causes or permits the  
4 elder or dependent adult to be placed in a situation in which his or  
5 her person or health is endangered, is punishable by imprisonment  
6 in a county jail not exceeding one year, or by a fine not to exceed  
7 six thousand dollars (\$6,000), or by both that fine and  
8 imprisonment, or by imprisonment in the state prison for two,  
9 three, or four years.

10 (2) If in the commission of an offense described in paragraph  
11 (1), the victim suffers great bodily injury, as defined in Section  
12 12022.7, the defendant shall receive an additional term in the state  
13 prison as follows:

14 (A) Three years if the victim is under 70 years of age.

15 (B) Five years if the victim is 70 years of age or older.

16 (3) If in the commission of an offense described in paragraph  
17 (1), the defendant proximately causes the death of the victim, the  
18 defendant shall receive an additional term in the state prison as  
19 follows:

20 (A) Five years if the victim is under 70 years of age.

21 (B) Seven years if the victim is 70 years of age or older.

22 (c) Any person who knows or reasonably should know that a  
23 person is an elder or dependent adult and who, under circumstances  
24 or conditions other than those likely to produce great bodily harm  
25 or death, willfully causes or permits any elder or dependent adult  
26 to suffer, or inflicts thereon unjustifiable physical pain or mental  
27 suffering, or having the care or custody of any elder or dependent  
28 adult, willfully causes or permits the person or health of the elder  
29 or dependent adult to be injured or willfully causes or permits the  
30 elder or dependent adult to be placed in a situation in which his or  
31 her person or health may be endangered, is guilty of a  
32 misdemeanor. A second or subsequent violation of this subdivision  
33 is punishable by a fine not to exceed two thousand dollars (\$2,000),  
34 or by imprisonment in a county jail not to exceed one year, or by  
35 both that fine and imprisonment.

36 (d) Any person who is not a caretaker who violates any provision  
37 of law proscribing theft, embezzlement, forgery, or fraud, or who  
38 violates Section 530.5 proscribing identity theft, with respect to  
39 the property or personal identifying information of an elder or a  
40 dependent adult, or who knowingly engages in exploitation of, or

1 exerts criminal undue influence upon, ~~a vulnerable~~ *an* elder or  
2 dependent adult in order to acquire possession or control of an  
3 interest in funds or property belonging to the ~~vulnerable~~ elder or  
4 dependent adult, and who knows or reasonably should know that  
5 the victim is an elder or a dependent adult, is punishable by  
6 imprisonment in a county jail not exceeding one year, or in the  
7 state prison for two, three, or four years, when the moneys, labor,  
8 goods, services, or real or personal property taken or obtained is  
9 of a value exceeding four hundred dollars (\$400); and by a fine  
10 not exceeding one thousand dollars (\$1,000), by imprisonment in  
11 a county jail not exceeding one year, or by both that fine and  
12 imprisonment, when the moneys, labor, goods, services, or real or  
13 personal property taken or obtained is of a value not exceeding  
14 four hundred dollars (\$400).

15 (e) Any caretaker of an elder or a dependent adult who violates  
16 any provision of law proscribing theft, embezzlement, forgery, or  
17 fraud, or who violates Section 530.5 proscribing identity theft,  
18 with respect to the property or personal identifying information of  
19 that elder or dependent adult, or who knowingly engages in  
20 exploitation of, or exerts criminal undue influence upon, ~~a~~  
21 ~~vulnerable~~ *an* elder or dependent adult in order to acquire  
22 possession or control of an interest in funds or property belonging  
23 to the ~~vulnerable~~ elder or dependent adult, is punishable by  
24 imprisonment in a county jail not exceeding one year, or in the  
25 state prison for two, three, or four years when the moneys, labor,  
26 goods, services, or real or personal property taken or obtained is  
27 of a value exceeding four hundred dollars (\$400), and by a fine  
28 not exceeding one thousand dollars (\$1,000), by imprisonment in  
29 a county jail not exceeding one year, or by both that fine and  
30 imprisonment, when the moneys, labor, goods, services, or real or  
31 personal property taken or obtained is of a value not exceeding  
32 four hundred dollars (\$400).

33 (f) Any person convicted of a felony violation of subdivision  
34 (b), (d), or (e) who has any prior conviction for a violation of  
35 subdivision (b), (d), or (e), shall receive two years in the state  
36 prison for each prior conviction in addition to the sentence provided  
37 in subdivision (b), (d), or (e). The existence of any fact that would  
38 subject a person to a penalty enhancement pursuant to this  
39 subdivision shall be alleged in the accusatory pleading and either

1 admitted by the defendant in open court or found to be true by the  
2 trier of fact.

3 (g) Any person who commits the false imprisonment of an elder  
4 or a dependent adult by the use of violence, menace, fraud, or  
5 deceit is punishable by imprisonment in the state prison for two,  
6 three, or four years.

7 (h) For purposes of this section, the following definitions shall  
8 apply:

9 (1) “Caretaker” means any person who has the care, custody,  
10 or control of, or who stands in a position of trust with, an elder or  
11 a dependent adult, or who has assumed any of the duties  
12 correspondent to the role of a caregiver for the elder or dependent  
13 adult.

14 (2) (A) “Criminal undue influence” means the exploitation by  
15 a person of a known physical or mental infirmity or other physical,  
16 mental, or emotional dysfunction in ~~a vulnerable~~ *an* elder or  
17 dependent adult for financial gain by one of the following methods:

18 (i) Using a position of trust or confidence or using any real or  
19 apparent authority over the ~~vulnerable~~ elder or dependent adult  
20 for the purpose of obtaining an unfair advantage over the ~~vulnerable~~  
21 elder or dependent adult.

22 (ii) Knowingly taking an oppressive and unfair advantage of ~~a~~  
23 ~~vulnerable~~ *an* elder or dependent adult’s weakness of mind,  
24 necessities, or distress.

25 (B) It is a defense to criminal undue influence if the person held  
26 a good-faith belief that the ~~vulnerable~~ elder or dependent adult had  
27 the capacity to consent, and did consent to the transaction. For this  
28 defense to apply, the person must engage in the transaction or  
29 attempt to take the funds or property openly. If the person attempts  
30 to conceal the taking, either when it occurs or after it is discovered,  
31 the defense is unavailable.

32 (3) “Dependent adult” means any person who is between the  
33 ages of 18 and 64, who has physical or mental limitations that  
34 restrict his or her ability to carry out normal activities or to protect  
35 his or her rights, including, but not limited to, persons who have  
36 physical or developmental disabilities or whose physical or mental  
37 abilities have diminished because of age. “Dependent adult”  
38 includes any person between the ages of 18 and 64 who is admitted  
39 as an inpatient to a 24-hour health facility, as defined in Sections  
40 1250, 1250.2, and 1250.3 of the Health and Safety Code, or who

1 receives services at or from a facility required to be licensed by  
2 the State of California to serve dependent adults, or who receives  
3 services from a home care provider required to be licensed by the  
4 State of California or from a person or organization that offers,  
5 provides, or arranges for personal care assistance services.

6 (4) “Elder” means any person who is 65 years of age or older.

7 (5) “Exploitation of a ~~vulnerable~~ *an elder or dependent adult*”  
8 means either of the following:

9 (A) Knowingly, by means of threats, force, duress, menace,  
10 fraud, intimidation, or criminal undue influence, obtaining or using,  
11 or endeavoring to obtain or use, the ~~vulnerable~~ *elder or dependent*  
12 adult’s funds, assets, or real or personal property with the intent  
13 to temporarily or permanently deprive the ~~vulnerable~~ *elder or*  
14 *dependent* adult of the use, benefit, or possession of the funds,  
15 assets, or real or personal property, or to benefit someone other  
16 than the ~~vulnerable~~ *elder or dependent* adult, by a person who  
17 either:

18 (i) Stands in a position of trust and confidence with the elder or  
19 dependent adult.

20 (ii) Has a personal, professional, or business relationship with  
21 the elder or dependent adult.

22 (B) Obtaining or using, endeavoring to obtain or use, or  
23 conspiring with another to obtain or use the ~~vulnerable~~ *elder or*  
24 *dependent* adult’s funds, assets, or property with the intent to  
25 temporarily or permanently deprive the elder or dependent adult  
26 of the use, benefit, or possession of the funds, assets, or property,  
27 or to benefit someone other than the elder or dependent adult, by  
28 a person who knows that the elder or dependent adult lacks the  
29 capacity to consent.

30 (6) ~~A vulnerable~~ *An elder or dependent adult* “lacks the capacity  
31 to consent” to an act or transaction if any of the following applies:

32 (A) He or she acts as a result of threats, force, duress,  
33 harassment, menace, fraud, or criminal undue influence.

34 (B) He or she lacks knowledge of the true nature of the act or  
35 transaction involved.

36 (C) He or she lacks the mental capacity to make an intelligent  
37 choice about whether or not to do something proposed by another  
38 person.

39 (7) ~~“Vulnerable elder or dependent adult” means an adult who,~~  
40 ~~regardless of place of residence, possesses a physical or mental~~

1 infirmity or other physical, mental, or emotional dysfunction that  
2 impairs his or her ability to provide adequately for his or her own  
3 care without assistance, including the provision of food, shelter,  
4 clothing, health care, medication, hygiene tasks, mobility  
5 assistance, or supervision, or to resist criminal undue influence in  
6 regard to the adult's financial matters if, because of the physical  
7 or mental infirmity or other physical, mental, or emotional  
8 dysfunction, the individual has an impaired ability to protect him  
9 or herself from physical abuse, financial abuse, maltreatment, or  
10 exploitation.

11 (i) This section does not preclude prosecution under both this  
12 section and Section 187 or 12022.7 or any other provision of law.  
13 However, a person shall not receive an additional term of  
14 imprisonment under both paragraphs (2) and (3) of subdivision  
15 (b) for any single offense, nor shall a person receive an additional  
16 term of imprisonment under both Section 12022.7 and paragraph  
17 (2) or (3) of subdivision (b) for any single offense.

18 (j) In any case in which a person is convicted of violating these  
19 provisions, the court may require him or her to receive appropriate  
20 counseling as a condition of probation. Any defendant ordered to  
21 be placed in a counseling program shall be responsible for paying  
22 the expense of his or her participation in the counseling program  
23 as determined by the court. The court shall take into consideration  
24 the ability of the defendant to pay, and no defendant shall be denied  
25 probation because of his or her inability to pay.

26 SEC. 3. Section 1048 of the Penal Code is amended to read:

27 1048. (a) The issues on the calendar shall be disposed of in  
28 the following order, unless for good cause the court directs an  
29 action to be tried out of its order:

30 (1) Prosecutions for felony, when the defendant is in custody.

31 (2) Prosecutions for misdemeanor, when the defendant is in  
32 custody.

33 (3) Prosecutions for felony, when the defendant is on bail.

34 (4) Prosecutions for misdemeanor, when the defendant is on  
35 bail.

36 (b) Notwithstanding subdivision (a), all criminal actions in  
37 which (1) a minor is detained as a material witness or is the victim  
38 of the alleged offense, (2) a person who was 70 years of age or  
39 older at the time of the alleged offense or is a dependent adult, as  
40 defined in subdivision (h) of Section 368, was a witness to, or is

1 the victim of, the alleged offense or (3) any person is a victim of  
2 an alleged violation of Section 261, 262, 264.1, 273a, 273d, 285,  
3 286, 288, 288a, or 289, committed by the use of force, violence,  
4 or the threat thereof, shall be given precedence over all other  
5 criminal actions in the order of trial. In those actions, continuations  
6 shall be granted by the court only after a hearing and determination  
7 of the necessity thereof, and in any event, the trial shall be  
8 commenced within 30 days after arraignment, unless for good  
9 cause the court shall direct the action to be continued, after a  
10 hearing and determination of the necessity of the continuance, and  
11 states the findings for a determination of good cause on the record.

12 (c) Nothing in this section shall be deemed to provide a statutory  
13 right to a trial within 30 days.

14 SEC. 4. Section 14213 of the Penal Code is amended to read:

15 14213. (a) As used in this title, “missing person” includes, but  
16 is not limited to, a child who has been taken, detained, concealed,  
17 enticed away, or retained by a parent in violation of Chapter 4  
18 (commencing with Section 277) of Title 9 of Part 1. It also includes  
19 any child who is missing voluntarily or involuntarily, or under  
20 circumstances not conforming to his or her ordinary habits or  
21 behavior and who may be in need of assistance.

22 (b) As used in this title, “evidence that the person is at risk”  
23 includes, but is not limited to, evidence or indications of any of  
24 the following:

25 (1) The person missing is the victim of a crime or foul play.

26 (2) The person missing is in need of medical attention.

27 (3) The person missing has no pattern of running away or  
28 disappearing.

29 (4) The person missing may be the victim of parental abduction.

30 (5) The person missing is mentally impaired.

31 (c) As used in this title, “child” is any person under the age of  
32 18.

33 (d) As used in this title, “center” means the Violent Crime  
34 Information Center.

35 (e) As used in this title, “dependent adult” is any person  
36 described in paragraph (3) of subdivision (h) of Section 368.

37 (f) As used in this title, “dental or medical records or X-rays,”  
38 include all those records or X-rays which are in the possession of  
39 a dentist, physician and surgeon, or medical facility.



1     SEC. 5. No reimbursement is required by this act pursuant to  
2     Section 6 of Article XIII B of the California Constitution because  
3     the only costs that may be incurred by a local agency or school  
4     district will be incurred because this act creates a new crime or  
5     infraction, eliminates a crime or infraction, or changes the penalty  
6     for a crime or infraction, within the meaning of Section 17556 of  
7     the Government Code, or changes the definition of a crime within  
8     the meaning of Section 6 of Article XIII B of the California  
9     Constitution.

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